



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Huber, Hunt & Nichols, Inc.

File: B-271112

Date: May 21, 1996

Alan H. Goldstein, Esq., Dutton Overman Goldstein Pinkus, for the protester.
Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed low bidder to correct mistake in its bid prior to award where the agency reasonably concluded that clear and convincing evidence established the mistake and the intended bid price, and the corrected bid remains low.

DECISION

Huber, Hunt & Nichols, Inc. (HHN) protests the award of a contract to Trafalgar House Construction, Inc. under invitation for bids (IFB) No. 9515-AE, issued by the Department of Veterans Affairs (VA) for improvements to the Roudebush VA Medical Center, Indianapolis, Indiana. The protester contends that the VA, after bid opening but before award, improperly permitted an upward correction to Trafalgar's bid.

We deny the protest.

The IFB sought bids for general construction, including several alternate items, and contemplated the award of one contract on the basis of the lowest aggregate bid. The agency received the following five bids by bid opening on September 28, 1995:

Trafalgar	\$23,387,000
HHN	24,370,000
R.L. Turner	24,725,000
Centex	25,193,000
F.A. Wilhelm	29,240,000

On September 29, Trafalgar informed the contracting officer that its bid contained a mistake. In subsequent correspondence to the agency, Trafalgar explained that a subcontractor's quote for drywall services, for \$1,715,050, was inadvertently transferred from its hand-written "subcontract bid recording sheet" to Trafalgar's computerized bidding system as "\$1,071,505." A "0" thus had been mistakenly entered in the hundred-thousandth column instead of a "7," resulting in a bid mistake of \$643,545 (\$1,715,050 minus \$1,071,505). Trafalgar requested that it be allowed an upward correction to its bid to include the omitted amount, for a total corrected bid of \$24,030,545.

Based on its review of the documents Trafalgar submitted in support of its mistake claim, including its "subcontractor bid recording sheet" and other workpapers, the VA concluded that Trafalgar had submitted clear and convincing evidence of the mistake and of its intended bid, and permitted the firm an upward correction to its bid. On December 22, the VA awarded the contract to Trafalgar at the corrected bid price, \$24,030,545. This protest to our Office followed an agency-level protest, which the VA denied.

PROTESTER'S CONTENTIONS

The protester maintains that Trafalgar's "subcontract bid recording sheet" shows the drywall subcontractor's quote Trafalgar intended to use in preparing its bid as \$1,700,000. HHN points out that even when including other work Trafalgar added to that base price the column on the worksheet corresponding to that drywall subcontractor does not add up to \$1,715,050, the alleged intended bid. HHN maintains that in light of that inconsistency in the worksheet, the agency's conclusion that Trafalgar had submitted clear and convincing evidence of its intended bid was unreasonable.

HHN also contends that when Trafalgar was selecting a drywall subcontractor's quote to include in its final bid sheet, it should have noticed the wide disparity (of more than \$700,000) between the amount it entered on its bid sheet and the other subcontractor's quote for the same work. Because Trafalgar failed to do so, HHN argues, it was negligent in preparing its bid and should be required to accept the award at the uncorrected bid price or withdraw its bid. Alternatively, the protester contends that selection of the lower amount must have been deliberate, and therefore did not constitute a mistake subject to correction.

ANALYSIS

Mistakes in a bid generally do not render the bid unacceptable if the errors are correctable under the mistake in bid procedures set out in Federal Acquisition Regulation (FAR) § 14.407. P. K. Painting Co., B-247357, May 5, 1992, 92-1 CPD ¶ 424. Correction is proper if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, and the corrected bid does not displace other bids. FAR § 14.407-3(a). We treat the question of whether the evidence of the mistake and the bid intended meets the clear and convincing standard as a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Gunco, Inc., B-238910, July 17, 1990, 90-2 CPD ¶ 46. Workpapers may constitute clear and convincing evidence if they show the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence. Interstate Constr., Inc., B-248355, Aug. 6, 1992, 92-2 CPD ¶ 86. Here, the record shows that Trafalgar presented clear and convincing evidence establishing both the mistake and the intended bid. Further, the corrected bid does not displace any other bid. Accordingly, we find that correction is proper.

In support of its mistake claim, Trafalgar provided the agency with its "subcontract bid recording sheet" showing the prices quoted by various drywall subcontractors; copies of fax transmissions of the intended drywall subcontractor's quote; copies of Trafalgar's computerized bid worksheets and bid summary sheet; and accompanying affidavits from Trafalgar's vice president of estimating and another Trafalgar employee who was involved in preparing Trafalgar's bid, explaining how the mistake occurred and how Trafalgar arrived at the drywall subcontractor's price it intended to use in preparing its bid, \$1,715,050.

Trafalgar's "subcontract bid recording sheet" shows that the subcontractor's price at issue was recorded on that sheet as \$1,700,000. To that base price, Trafalgar added prices for other work items. The worksheet clearly shows the hand-written "grand total" for that drywall subcontractor as "\$1,715,050." The record also contains a copy of Trafalgar's computerized "bid history" printout showing all items of work with all corresponding subcontractor quotations. That printout clearly shows that the "grand total" for the drywall item at issue was incorrectly entered on Trafalgar's bid history sheet as "\$1,071,505." Consequently, that mistaken amount was incorporated into Trafalgar's final bid, resulting in Trafalgar's bid price being understated by \$643,545.

It is clear based on our review of the record that the mistake occurred when Trafalgar transcribed the "grand total" from the "subcontractor bid recording sheet" onto its computerized bidding system. The protester has presented no argument, and we find no basis in the record, to question the authenticity of Trafalgar's worksheets or its explanation for the transcription error. Accordingly, we conclude that the VA reasonably found that Trafalgar's workpapers and supporting affidavits

established clear and convincing evidence of the mistake and of the intended bid, and properly allowed the correction. See J. Schouten Constr., Inc., B-256710, June 6, 1994, 94-1 CPD ¶ 353.

HHN points out that the worksheet shows that the prices for the additional work items under the drywall subcontractor's column add up to \$17,600, making the grand total in that column \$1,717,600, rather than \$1,715,050, for a difference of \$2,550. Trafalgar explained that in calculating the grand total price for the drywall subcontractor, it used the lower prices for the additional work items quoted by another vendor whose quotes also appear on the worksheet. We have reviewed the worksheet in light of Trafalgar's statement and find the firm's explanation reasonable and consistent with the figures shown on the worksheet. In any case, correction may be allowed, even where the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. See J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43. In those circumstances, correction is limited to increasing the contract price only to the bottom end of the range of uncertainty. Price/CIRI Constr., B-230603, May 25, 1988, 88-1 CPD ¶ 500. To the extent that there is some uncertainty regarding Trafalgar's intended bid, by HHN's own calculations the range of that uncertainty is only \$2,550, and Trafalgar's bid would remain low by more than \$336,000 regardless of which vendor's prices Trafalgar intended to use to price the additional work items.

The protester also contends that Trafalgar acted negligently when it entered the mistaken amount for drywall work on its final bid sheet in light of the disparity between that amount and the other subcontractor's quote on the "bid history" worksheet. To the extent that the protester argues that any such negligence precludes correction of the bid, this argument is without merit. The question for our review is whether the VA reasonably concluded that Trafalgar had submitted clear and convincing evidence of the mistake and of the intended bid, see, e.g., R.L. Lee Constr., B-255214, Feb. 7, 1994, 94-1 CPD ¶ 83, not whether Trafalgar was negligent in preparing its bid. Thus, even if the error was caused by Trafalgar's negligence, as HHN contends, the VA may properly consider Trafalgar's request for bid correction. See Specialty Sys. Inc., B-204577, Feb. 9, 1982, 82-1 CPD ¶ 114. Pointing again to the disparity in the two amounts for the drywall work listed on the "bid history" worksheet, the protester argues that the selection of the lower amount must have been deliberate, and therefore was not a mistake subject to

correction. There is no support in the record for this position; rather, as explained above, the documentary evidence submitted by Trafalgar supports the agency's conclusion that a mistake was made and that the lower amount was not the amount intended to be included in the final bid calculation.

The protest is denied.

Comptroller General
of the United States